

## Revoking Federal Qualification of an HMO: What Process Is Due?

Due process does not require an agency hearing when the Department of Health and Human Services revokes a health maintenance organization's Federal qualification. *Monumental Health Plan, Inc. v. Department of Health and Human Services*, No. J-81-387 (D. Maryland, March 30, 1981), appeal docketed, No. 81-1325, 4th Cir., April 13, 1981.

The Monumental Health Plan, Inc., of Baltimore, Md., a federally qualified health maintenance organization (HMO), challenged the revocation of its qualification by the Department of Health and Human Services (HHS). After a trial on the merits, the United States District Court for the District of Maryland issued an order denying Monumental's request for injunctive and declarative relief and holding that the revocation had been effected in accordance with law.

Title XIII of the Public Health Service Act authorizes the Secretary of HHS to qualify HMOs that deliver health services in a statutorily prescribed manner and meet certain financial, organizational, and operational requirements. Although Federal qualification is not a license to operate as an HMO, it permits such an entity (a) to seek inclusion in employees' health benefits plans under 42 U.S.C. 300e-9 (which requires most employers with 25 employees or more to offer a qualified HMO in its benefits plan) and (b) to receive Federal loans and loan guarantees for operating cost

deficits under 42 U.S.C. 300e-4. The Secretary of HHS has promulgated regulations pertaining to the procedures and standards applied by the Department in qualifying HMOs, in monitoring their compliance with Federal law, and in revoking qualification for noncompliance. See 42 CFR §§ 110.901 *et seq.* These regulations are administered by the Office of Health Maintenance Organizations (OHMO) in the Public Health Service.

The District Court found that Monumental had first applied for Federal qualification in 1977. Although OHMO was unable to qualify Monumental based upon its original application, special efforts were undertaken to assist Monumental in restructuring its debts and improving its management. In November 1979, Monumental became a qualified HMO and thereafter received a Federal loan commitment of \$2.5 million.

### *HMO FISCALLY UNSOUND*

The evidence at the trial revealed that Monumental began encountering financial difficulties within several

months after qualification. OHMO commenced a formal evaluation of Monumental in August 1980 and subsequently found that the organization was in noncompliance with the requirements that it maintain a fiscally sound operation and have satisfactory administrative and managerial arrangements. See 42 U.S.C. 300e(c)(1) and 42 CFR 110.108(a). OHMO's finding of noncompliance was based upon documentary evidence submitted to the agency by Monumental and private consultants as well as upon a 3-day visit to the organization by OHMO personnel. A formal notice of this decision was sent to Monumental in December 1980, informing the HMO of its right to submit a proposed corrective action plan (CAP) for OHMO's approval. See 42 CFR 110.904(c)(2). During the same month, OHMO also found that Monumental was in default of the Federal loan agreement and suspended further disbursements of loan money.

The evidence before the District Court showed that the proposed CAP submitted to OHMO by Monumental in January 1981 was found to be unacceptable. Consequently, OHMO directed the organization to implement certain corrective actions, *inter alia*, to obtain sufficient non-Federal financing to restore Monumental's financial soundness. See 42 U.S.C.

300e-11(b)(12). When Monumental failed to carry out this corrective action within the prescribed 30 days, OHMO notified the HMO that in accordance with 42 U.S.C. 300e-11(b)(1), its Federal qualification would be revoked effective the fifth working day after receipt of the notice.

Thereafter, Monumental instituted a lawsuit to enjoin the revocation and to compel the agency to release the \$1 million loan disbursement that had been suspended. Monumental's challenge was essentially twofold. First, the HMO alleged that the agency's decision was procedurally deficient because a pre-decision hearing before an impartial decision maker had not been held. Monumental contended that such a hearing was necessary because OHMO had combined the investigatory and adjudicative functions delegated to it and because OHMO officials had exhibited bias towards the HMO. Second, Monumental claimed that the agency's decisions to revoke qualification and to suspend the loan payments were arbitrary and capricious and should be set aside because the factual record created by the agency did not support them. In particular, Monumental challenged OHMO's conclusion that the HMO was in dire financial condition and that it could not remain viable without a substantial infusion of private funds.

#### HEARING NOT REQUIRED

The District Court adopted the Government's arguments that a pre-decision hearing was not required in this case. The Court stated that neither the Administrative Procedure Act (APA), 5 U.S.C. § 554, nor the Constitutional right to procedural due process, gave Monumental a right to a hearing. The APA simply provides procedures to be followed when a hearing is in fact required by a statute. Because the applicable provisions of Title XIII and the Department's regulations do not include the right to a hearing, the APA is inapplicable.

Similarly, the due process clause of the Fifth Amendment to the Constitution does not mandate that an agency grant an oral hearing before it takes action regarding an HMO's qualification or loan disbursements. Although these actions affected Monumental's property interests enough to require some due process, the amount of

procedural protection afforded must be commensurate with the demands of the particular situation. In this regard, the District Court considered the three factors set forth by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976):

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Applying this test, the Court found that Monumental's interests in OHMO's actions, although substantial, were counterbalanced by the Government's interests in protecting from the risk of the HMO's insolvency (a) taxpayers' money that had been committed to the HMO, (b) Monumental's membership, both in terms of health care and the financial ability to provide it, and (c) Monumental's creditors. Moreover, the Court found that the risk of an erroneous deprivation of Monumental's interest was minimal in light of the procedures followed by OHMO. Monumental had been given adequate notice of the financial deficiencies upon which the Secretary based the revocation of qualification, as well as ample opportunity to respond to and rectify deficiencies. Lastly, the Court found that a hearing would have served no purpose since at no time did Monumental dispute the facts upon which the Secretary's action was based. The only basis of disagreement was the conclusion drawn by OHMO from those facts. Accordingly, the District court held that due process requirements were satisfied by the procedure followed by OHMO in this case.

A related but separate element of Monumental's due process challenge was the claim that the decision makers in OHMO were biased against Monumental. Specifically, Monumental contended that the combination of investigatory and adjudicatory functions in one agency impermissibly taints the decision maker. The Court rejected this claim on the ground that the combination of these functions will only amount to a denial of due process when an intolerably high risk of unfairness results. Such a degree of unfairness was not found to be present here.

#### RATIONAL BASIS FOR ACTIONS

With respect to Monumental's claim that the Secretary's decision to revoke qualification and suspend loan disbursements was arbitrary, capricious, or an abuse of discretion (even assuming that the procedures followed were legally adequate), the Court found that OHMO had considered all the relevant factors and that a rational connection existed between the factual record and the conclusions reached by the agency. The Court was not persuaded that certain statements made by OHMO officials before the agency's actions reflected a bias that invalidated the decisions they reached. Instead, the Court focused on the evidence that Monumental's financial condition was so serious that the HMO could not remain viable without a substantial infusion of private funds. Failing to get this funding, Monumental was not in compliance with the clear mandate of 42 U.S.C. 300e(c)(1) and 42 CFR 110.108(a)(1)(i). In short, the Court adhered to the well-established rule that a court will not substitute its judgment for that of an agency (especially when the agency's judgment involves expertise in economic projection and cost analysis) except when the agency's decision is not supported by the factual record before it.

Following the filing of the District Court's order, Monumental ceased operations and voluntarily filed a petition for insolvency in the Maryland State courts. An appeal of the District Court's decision is pending before the Fourth Circuit Court of Appeals at this time.

In another Federal case, the United States District Court for the Southern District of New York upheld OHMO's revocation of the Manhattan Health Plan's qualification. That court also found that the procedures followed by the agency before reaching its decision (essentially those applied in the Monumental case) were legally sufficient. See *Manhattan Health Plan v. Richard Schweiker*, Civil Action No. 81 CIV 1312 (PNL) (S.D. N.Y., ruling from bench, March 13, 1981).

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